

BEFORE THE FEDERAL ELECTION COMMISSION NOV 17 AM 9:37

In the Matter of

MUR 6562

Paul B. Haring

CELA

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act has occurred, to make no reason to believe findings. The Office of General Counsel has determined that MUR 6562 should not be referred to the Alternative Dispute Resolution Office.

For the reasons set forth below, the Office of General Counsel recommends that the Commission find no reason to believe that Respondent Paul B. Haring ("Haring") violated the Act or underlying Commission regulations.¹

¹ The EPS rating information is as follows: Complaint Filed: April 24, 2012. Response Filed: June 4, 2012. No campaign committee was ever established.

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1 The Complaint alleges that Haring filed to become a candidate from Texas's 34th
2 Congressional District on December 19, 2011, according to the Republican Party of Texas's
3 website, <http://candidates.texasgop.org/candidates/paul-b-haring>.² The Complaint asserts that as
4 of April 18, 2012, Haring had not filed a Statement of Candidacy, or FEC Form 2, designating a
5 principal campaign committee within 15 days of becoming a candidate, as required by 11 C.F.R.
6 § 101.1(a). Compl. at 1. Additionally, the Complaint asserts that Haring failed to file a
7 Statement of Organization, or FEC Form 1, within 10 days thereafter, in violation of 11 C.F.R.
8 § 102.1(a). *Id.*

9 According to the Complaint, Haring was required to file the forms because he allegedly
10 had been "campaigning" and operated an "active multi-county campaign since December
11 [2011]." *Id.* Specifically, the Complaint cites to the Commission's testing the waters provisions
12 and identifies the following campaign activities allegedly performed by Haring: taking action to
13 qualify for the ballot; making statements referring to himself as a candidate; using advertising to
14 publicize his campaign; and conducting these activities over a protracted period of time or
15 shortly before the election. *Id.*

16 In his Response, Haring states that he had been an unsuccessful candidate for Congress in
17 2012. Resp. at 1. He explains that he did not file FEC Forms 1 or 2 or subsequent financial
18 disclosure reports because he did not receive contributions or make expenditures exceeding
19 \$5,000 and therefore did not qualify as a "candidate" as defined by the Act.

² We were unable to open the website in order to verify the date of Haring's alleged filing. The Texas GOP website <http://candidates.texasgop.org> lists Haring's name, home city, occupation, and date of birth, but does not disclose the date on which he filed as a Congressional candidate.

Haring also denies that his campaign purchased signs, advertisements in newspapers, the internet, or on radio, distributed mass mailings or made robocalls, although he acknowledges receiving "considerable free publicity from news stories about the election." *Id.* Finally, Haring states that when he ran for Congress in 2010, he qualified as a candidate and therefore made the requisite filings with the Commission. *Id.*

Under the Act and Commission regulations, an individual who becomes a candidate must file a Statement of Candidacy, or FEC Form 2, designating his or her principal campaign committee within 15 days after becoming a candidate. 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). An individual becomes a candidate for federal office when he or she receives contributions or makes expenditures in excess of \$5,000. 2 U.S.C. § 431(2); 11 C.F.R. § 100.3. The Commission also requires that the candidate's principal committee file a Statement of Organization within 10 days after designation. 2 U.S.C. § 433(a); 11 C.F.R. § 102.1(a). Subsequently, the principal committee of a candidate for the House of Representatives or the Senate must timely file quarterly reports and, when necessary, pre-election and post-election reports, covering specified periods of time. 11 C.F.R. § 104.5(a)(1)-(2).

Here, the Complaint does not allege, nor is there any indication, that Haring received contributions or made expenditures exceeding \$5,000. In a review of the public record, several news stories refer to Haring's professed difficulty in raising funds and report his statement that he had not raised sufficient funds to require the filing of FEC reports. *See Emma Perez-Trevino, Candidates Raise Significant War Chests, The Brownsville Herald, April 26, 2012, available at http://www.brownsvilleherald.com/news/valley/article_2eb014a3-137b-51bb-93cd-9974da672350.html; see also Emma Perez-Trevino, District 34 Candidates Face Compliance*

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1 *Issues*, The Brownsville Herald, May 21, 2012, *available at*
2 [http://www.brownsvilleherald.com/news/valley/article_f64d6cdb-1258-5943-b92a-](http://www.brownsvilleherald.com/news/valley/article_f64d6cdb-1258-5943-b92a-97b0cd5aca86.html)
3 [97b0cd5aca86.html](http://www.brownsvilleherald.com/news/valley/article_f64d6cdb-1258-5943-b92a-97b0cd5aca86.html).³

4 It appears that the Complaint may have misapplied 11 C.F.R. §§ 100.72 and 100.131,
5 commonly referred to as the “testing the waters” provisions, in this case. The “testing the
6 waters” provisions exclude from the definitions of “contribution” and “expenditure” funds
7 received and payments made solely to determine whether an individual should become a
8 candidate. *See* 11 C.F.R. §§ 100.72(a), 100.131(a). “Testing the waters” activities include, but
9 are not limited to, payments for polling, telephone calls, and travel. *Id.* But engaging in those
10 activities alone—without meeting the statutory \$5,000 threshold—does not suffice to qualify an
11 individual as a candidate under the Act. 2 U.S.C. § 431(2); 11 C.F.R. § 100.3.

12 As noted, however, there are no facts to suggest that Haring was either “testing the
13 waters” or raised or expended in excess of \$5,000. Thus, Haring did not qualify as a “candidate”
14 under the Act or Commission regulations, nor did he trigger the Act’s registration and reporting
15 requirements.

16 Therefore, the Office of General Counsel recommends that the Commission find no
17 reason to believe that Paul B. Haring violated the Federal Election Campaign Act of 1971, as
18 amended or underlying Commission regulations. The Office of General Counsel also

³ Texas state law requires that, in order to become the Republican or Democratic Party nominee for the U.S. House of Representatives, an individual must either pay a filing fee of \$3,125 or, in lieu of a fee, submit a nominating petition signed by a certain number of qualified voters. *See* <http://www.sos.state.tx.us/elections/candidates/guide/demorrep.shtml>. We have no information as to whether Haring paid the filing fee or submitted a nominating petition signed by voters.

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recommends that the Commission approve the attached Factual and Legal Analysis and close the file as to all respondents.


RECOMMENDATIONS

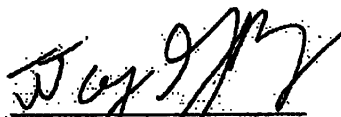
1. Find no reason to believe that Paul B. Haring violated the Federal Election Campaign Act of 1971, as amended, or underlying Commission regulations;
2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
3. Close the file as to all respondents.


Anthony Herman
General Counsel

6/14/13
Date

BY:


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